

STATE OF MICHIGAN
COURT OF APPEALS

LISA GRAHOVAC, Personal Representative of
the Estate of PAUL BRYAN GRAHOVAC,

Plaintiff-Appellee,

v

MUNISING TOWNSHIP and RICHARD
ALLAN FROMM,

Defendants,

and

HAROLD ANDERSON,

Defendant-Appellant.

FOR PUBLICATION
September 21, 2004
9:05 a.m.

No. 248352
Alger Circuit Court
LC No. 02-003927-NO

Official Reported Version

Before: Whitbeck, C.J., and Griffin and Borrello, JJ.

GRIFFIN, J. (*dissenting*).

The primary issue presented on appeal is whether a fire chief of a township¹ fire department is entitled to absolute governmental immunity, pursuant to MCL 691.1407(5). I would hold that defendant Harold Anderson, as the township fire chief, is afforded such immunity. Accordingly, I respectfully dissent, and I would reverse the denial of defendant's motion for summary disposition.

I

The overriding goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature as expressed in the statutory language. *Gladych v New Family*

¹ On appeal, neither side contends that Munising Township is a charter township, and, accordingly, the assumption made by the lower court—that Munising Township is not a charter township—is not in dispute.

Homes, Inc., 468 Mich 594, 597; 664 NW2d 705 (2003). If the plain meaning of the language is clear, judicial construction is neither necessary nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). "Similarly, courts may not speculate about an unstated purpose where the unambiguous text plainly reflects the intent of the Legislature." *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). "Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent." *Sun Valley Foods Co*, *supra* at 236.

MCL 691.1407(5) provides:

A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

In the present case, there is no dispute that Fire Chief Anderson is the highest appointive executive official² of the Munising Township Fire Department. Accordingly, to determine whether defendant is entitled to absolute immunity, this Court must decide whether a township fire department is a level of government. Unfortunately, the governmental immunity act does not define the term "all levels of government." However, other terms used in the act are defined. See MCL 691.1401. Of significance to the instant appeal is the term "governmental agency," which is used throughout the act and is specifically defined as follows: "'Governmental agency' means the state or a *political subdivision*." MCL 691.1401(d) (emphasis added). While the majority concludes that a township fire department does not share any attributes of a political subdivision, the governmental immunity act defines the term "political subdivision" as including a "department" (MCL 691.1401[b])³ of a "township" (MCL 691.1401[a]).⁴ Thus, because a township fire department is a political subdivision under the governmental immunity act, it should also be deemed a "level of government."

Previously, this Court held that absolute executive immunity applies to a county prosecutor, *Bischoff v Calhoun Co Prosecutor*, 173 Mich App 802, 806; 434 NW2d 249 (1988), a school superintendent and school board members, *Nalepa v Plymouth-Canton Community*

² In obiter dictum, the majority misconstrues the statute as applying to "the *highest* elected or highest appointed executive official." Under the terms of the statute, an elected executive official of a level of government need not be the "highest" elected official to be afforded immunity.

³ "'Political subdivision' means a *municipal corporation*, county, county road commission, school district, community college district, port district, metropolitan district, or transportation authority or a combination of 2 or more of these when acting jointly; a district or authority authorized by law or formed by 1 or more political subdivisions; or an agency, *department*, court, board, or council of a political subdivision." (Emphasis added.)

⁴ "'Municipal corporation' means a city, village, or *township* or a combination of 2 or more of these when acting jointly." (Emphasis added.)

School Dist, 207 Mich App 580, 587; 525 NW2d 897 (1994), result aff'd 450 Mich 934 (1995), the director of the Department of Corrections, *Harrison v Dep't of Corrections*, 194 Mich App 446, 452; 487 NW2d 799 (1992), *Chivas v Koehler*, 182 Mich App 467, 471; 453 NW2d 264 (1990), and a police chief, *Payton v Detroit*, 211 Mich App 375, 394; 536 NW2d 233 (1995), *Washington v Starke*, 173 Mich App 230, 240-241; 433 NW2d 834 (1988), and *Meadows v Detroit*, 164 Mich App 418, 426-427; 418 NW2d 100 (1987).

Black's Law Dictionary (8th ed, 2004) defines "government" as, "An organization through which a body of people exercises political authority; the machinery by which sovereign power is expressed In this sense, the term refers collectively to the political organs of a country regardless of their function or level, and regardless of the subject matter they deal with." Black's further defines "local government" as "The government of a particular locality, such as a city or county; a governing body at a lower level than the state government. The term includes a school district, *fire district*, transportation authority, and any other special-purpose district or authority." (Emphasis added.)

As defendant notes, a fire chief is analogous to a police chief in that they both have supervisory power over a department of government. The trial court determined that a department of government, such as a fire department, is not a "level of government." However, this is not supported by our prior case law, which has determined that the Department of Corrections and police departments are levels of government. *Harrison, supra*, *Payton, supra*, *Washington, supra*, and *Meadows, supra*. Nothing in the statutory language limits the term "all levels of government" to a state, county, or township, as the trial court concluded. If the Legislature had intended such a limitation, it would have employed restricted terminology, rather than the broad term "all levels of government." In my view, because a township fire department is a political subdivision, it is also a level of government.

Additionally, I note that the Legislature has authorized a township that is not a charter township to establish and maintain a fire department and to employ and appoint a fire chief to operate and maintain the department:

The township board of a township, or the township boards of adjoining townships acting jointly, if appropriations have been made as provided in this act, *may establish and maintain police and fire departments*; organize and maintain police and fire vehicles; *employ and appoint* on behalf of an individual township a police chief and *fire chief* and other police and fire officers, including detectives, required for the proper and efficient operation and maintenance of the police and fire departments and proper law enforcement; *make and establish rules and regulations for the government of the police and fire departments*, employees, officers, and detectives; care and manage the motor vehicles, apparatus, equipment, property, and buildings pertaining to the police and fire departments; and prescribe the powers and duties of the employees, officers, and detectives. [MCL 41.806(1); emphasis added.]

For the reasons expressed above, and in view of the Legislature's authorization for a township that is not a charter township to *create* a fire department and to *appoint* a fire chief as the highest executive of the department, I would hold that, on the basis of plain meaning of the

governmental immunity statute, MCL 691.1407(5), and our prior case law, a township fire department is a level of government. Because defendant Anderson is the highest appointive executive official of a level of government, he is entitled to absolute governmental immunity pursuant to MCL 691.1407(5).

II

In the lower court, and on appeal, plaintiff also argued that defendant Anderson is not the highest executive appointive official of a level of government because Anderson is a part-time, volunteer fire chief.⁵ Plaintiff argues that the Legislature provided for qualified immunity for volunteers such as defendant under MCL 691.1407(2), and, therefore, he does not qualify as a highest executive official under MCL 691.1407(5). MCL 691.1407(2) provides:

Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. As used in this subdivision, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

Plaintiff asserts that because subsection 2 mentions volunteers, defendant falls under that subsection, rather than subsection 5. However, plaintiff fails to acknowledge the first phrase in subsection 2, "[e]xcept as otherwise provided in this section." Because defendant qualifies as the highest appointive executive official under MCL 691.1407(5), subsection 2 does not apply.

⁵ The circuit judge did not rule on plaintiff's argument that volunteers are not entitled to absolute immunity, pursuant to MCL 691.1407(5). Nevertheless, because the issue was raised below and can be decided as a matter of law, I consider it as an alternative basis for affirmance. *Cox v Flint Bd of Hosp Managers*, 462 Mich 859 (2000); *Village of Hickory Pointe Homeowners Ass'n v Smyk*, 262 Mich App 512; ___ NW2d ___ (2004).

Plaintiff requests this Court to read into subsection 5 a requirement that the highest executive official not be a volunteer. However, there is no language in MCL 691.1407(5) supporting such a requirement, and there is no ambiguity that would allow us to depart from the plain wording of the statute. *Sun Valley Foods Co, supra*.

I would reverse.

/s/ Richard Allen Griffin